

feature linking the broccoli plant species appears to be heat tolerance. Applicants agree with this assertion by the Examiner, in part.

The Examiner further asserts that a heat tolerant broccoli plant is obvious or anticipated over any of Yang, et al., Heather, et al. or DuFault, et al., and therefore does not constitute a special technical feature as defined by PCT Rule 13.2 because it does not define a contribution over the prior art.

Applicants disagree with the Examiner's description of Heather, et al., Dufault, et al., and Yang, et al. Applicants respectfully assert that the technical feature linking the claims is not simply heat tolerant broccoli. The claims are directed to commercially acceptable heat tolerant broccoli. None of the cited references anticipate or render obvious the pending claims directed to commercially acceptable heat tolerant broccoli. As such, the technical feature linking the pending claims does constitute a special technical feature as defined by PCT Rule 13.2.

In the event that the restriction requirement is maintained despite the above discussion, Applicants elect M7007 with traverse for the reasons presented above. All of the pending claims (54-80) read on the elected species.

Applicant requests examination of the elected subject matter on the merits.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 500852000101. However,

the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Dated: October 24, 2002

By:

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TO: U.S. Patent and Trademark Office
EXAMINER: Cynthia Collins
GROUP ART UNIT: 1638

Facsimile: 703/308-4242
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ATTORNEY DOCKET NO: 500852000101

From: Michael R. Ward

Date: October 24, 2002

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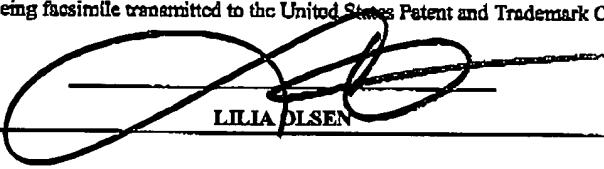
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LILIA OLSEN

Our Ref: 500852000101
Serial No.: 09/869,002 filed June 22, 2001
Title: HEAT TOLERANT BROCCOLI
Inventor(s): Robert BARHAM, David JOYNT

Enclosures:

1. Transmittal - 1 pg
2. Response to Restriction Requirement Mailed October 3, 2002, Paper 6 - 3 pgs

Michael R. Ward (38,651)

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Application Number	09/869,002
Filing Date	June 22, 2001
First Named Inventor	Robert BARHAM and David JOYNT
Group Art Unit	1638
Examiner Name	C. Collins
Total Number Of Pages In This Submission	500852000101

ENCLOSURES (check all that apply)		
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GROUP 1600**SIGNATURE OF APPLICANT, ATTORNEY OR AGENT**

Firm or Individual Name	MORRISON & FOERSTER LLP 425 Market Street, San Francisco, CA 94105-2842 MICHAEL R. WARD (Reg. No. 38,651)
Signature	<i>Michael R. Ward</i>
Date	October 24, 2002

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